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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77481198
Applicant	Okraski, Kurt J.
Applied for Mark	REDEMPTION SPORTS
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Submission	Appeal Brief
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Signature	/Michael D. Volk Jr./
Date	09/28/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:)
Applicant:	Kurt J. Okraski)
Mark:	Redemption Sports)
Serial No.:	77/481,198)
Filed:	05/22/08)
Examining Attorney:	Sharon A. Meier)
Law Office:	112)
Atty. Docket No.:	T07950)

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPEAL BRIEF

Refusal under Section 2(d) - Likelihood of Confusion

The trademark examining attorney has refused to register the trademark REDEMPTION SPORTS on the grounds that it is likely to cause confusion with U. S. Registration No. 3,473,211.

Applicant respectfully submits that the goods of the cited mark and the services of the applied-for-mark are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source since the Registrant's product is narrowly marketed to a particular type of consumer, the angler or sport fisherman.

Applicant has provided evidence in the form of a screenshot of the Registrant's website in the communication dated November 05, 2008 (Exhibit C) titled "Lucky Craft Weekly Journal" showing that the cited mark REDEMPTION appears to be specifically directed to fishing lures,

CERTIFICATE OF TRANSMISSION

I hereby certify that, on the date shown below, this correspondence is being transmitted to the U.S. Patent and Trademark Office by the Electronic System for Trademark Trials and Appeals ("ESTTA").

Date: September 28, 2009

/Michael D. Volk Jr./

Signature

Michael D. Volk Jr.

(type or print name of person certifying)

particularly, “spinnerbait” lures and that these lures were apparently developed and are endorsed by a well-known angler, Skeet Reese. A copy of the previously submitted Exhibit C is attached hereto and labeled Exhibit A.

The above mentioned evidence further shows that the REDEMPTION LURES were on display at the The International Convention of Allied Sportfishing Trades (“ICAST”) and that ICAST is the world’s largest fishing trade show. To present a product at ICAST, one must be a member of the American Sportfishing Association. Exhibit D of the communication dated November 05, 2008 shows a copy of a Membership Application Form for the American Sportfishing Association. A copy of the previously submitted Exhibit D is attached hereto and labeled Exhibit B.

The following exemplary member types are permitted to be members in the American Sportfishing Association. All relate to *fishing* and not Applicant’s recited services.

- **Advocacy Group:** A non-profit organization whose primary objective is the *promotion of fishing or natural resource conservation*.
- **Allied Manufacturer:** A company that does not produce fishing tackle but whose primary source of income comes from the production or *private labeling of merchandise that may be used by anglers*.
- **Allied Organization:** A for-profit or non-profit organization with *a mission or purpose related to the sportfishing industry*.
- **Resource Agency:** Any state or federal *fish and wildlife or natural resource agency*.
- **Non-Voting Associate Member:** Any individual, partnership or corporation that has a special interest in sportfishing and is not eligible for, or does not desire, regular membership including manufacturer representatives, charter boat companies or captains, consultants and benefit providers.

Applicant respectfully submits that per the marketing activities of Lucky Craft (*e.g.*, endorsement by a well known sport fisherman, narrowly tailored product specification, etc.), this product is narrowly marketed to a particular type of consumer, the angler or sport fisherman. In that regard, it would be highly unusual and unlikely for an extreme sportsperson (a snow-skier or wakeboarder) to confuse Lucky Craft, the source of the cited goods, with an online retailer of extreme sports related goods.

Applicant respectfully submits that Applicant has amended the services. Applicant's description of Goods and Services now reads as follows: online retail store services featuring snowboards, snow-skis, wakeboards, water-skis, and related accessories, apparel and footwear, specifically excluding fishing equipment, fishing lures, fishing rods, and fishing lines.

Applicant's services now specifically exclude those services and goods which might be confused with the registrant's fishing lures, fishing rods, and fishing lines. When the registrant's identification is sufficiently narrow, the Applicant can amend its identification of goods and services in the application to show the difference between the goods or services. Since a comparison of the goods or services in applications is based solely upon the respective identifications, it is evident that, as now defined Applicant's services clearly differentiate it from the *goods* of the cited registration.

Applicant further submits that the Registrant's mark is applied to goods, namely, fishing lures, *not* online retail services featuring extreme-sports-related sporting goods and that it should be taken into consideration that there is a difference between goods and services. Shen Mfg. Co., Inc. v. The Ritz Hotel, Ltd., 393 F.3d 1238, 1245 (Fed. Cir., 2004) (“Cooking classes are not the same type of product as kitchen textiles: one is a service while the other is a tangible good. In this sense, it would be more accurate to say that cooking classes are in the same category as language or pottery classes”).

Applicant further submits that a policy relating to the “likelihood of confusion” standard is that a senior user is protected against the use of confusingly similar marks on closely related goods so that the senior user may enter markets in which it does not now trade, but into which it might reasonably be expected to expand in the future. Since the Registrant only focuses on highly specialized goods (fishing equipment, fishing lures, fishing rods, and fishing lines) it is not reasonable to expect the Registrant to expand its business into services featuring snowboards, snow-skis, wakeboards, water-skis, related apparel and related footwear. Applicant has provided evidence in the form of pictures from registrant's website (Exhibit A of the communication dated May 25, 2009) demonstrating that the Registrant develops *highly specialized fishing equipment* (for professional anglers). A copy of the previously submitted Exhibit A is attached hereto and labeled Exhibit C.

Based on the fact that the registrant develops *highly specialized fishing equipment*, it is not likely that the registrant would expand business into services featuring snowboards, snowskis, etc. In fact, the Registrant's mission statement which can be found on the registrant's website states,

Lucky Craft Inc., craftsmen of the Pointer, Sammy and other high performance lures, is quickly becoming recognized as the leader among American anglers. In a whirlwind of tournament victories across the country, Lucky Craft has become the Pros' #1 choice in bait. And now the secret is out as anglers of all levels are developing a special attraction for these lures for one simple reason... they catch more fish. Our lures, a result of many years of research and development coupled with the finest materials, patented manufacturing process and quality control, are a testament to our complete dedication for the ultimate fishing experience. This excellence in craftsmanship goes into every Lucky Craft bait. As soon as you pick up our lure, you immediately see the quality that's apparent in our product. And we're proud to say, that's just the beginning... wait until you feel the irresistible action on the water!

Applicant further submits that if the goods are related, but not competitive, several other factors are added to the calculus. AMF Inc. v. Sleekcraft Boats, 599 F.2d 341 (C.A.9 (Cal.), 1979). Applicant's and registrant's goods are not competitive since the registrant goods are *highly specialized fishing equipment* and the Applicant specifically excludes fishing equipment from the description of *services*.

In this case, the applied for and the registered mark convey different commercial impressions. The registered mark "REDEMPTION" does not create any particular commercial impression but rather has a biblical connotation, while the applied-for mark "REDEMPTION SPORTS" creates a "sports" impression.

Applicant respectfully submits that there is no likelihood of confusion if the marks in their entireties convey different commercial impressions. Sheen Manufacturing Co. v. Ritz Hotel Ltd., 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (RITZ and THE RITZ KIDS create different commercial impressions); Farm Fresh Catfish Co., 231 USPQ 495 (TTAB 1986)

(CATFISH BOBBERS (with “CATFISH” disclaimed) for fish held not likely to be confused with BOBBER for restaurant services); Shawnee Milling Co., 225 USPQ 747 (TTAB 1985) (GOLDEN CRUST for flour held not likely to be confused with ADOLPH’S GOLD’N CRUST and design (with “GOLD’N CRUST” disclaimed) for coating and seasoning for food items); S.D. Fabrics, Inc., 223 USPQ 54 (TTAB 1984) (DESIGNERS/FABRIC (stylized) for retail fabric store services held not likely to be confused with DAN RIVER DESIGNER FABRICS and design for textile fabrics).

Therefore, because the Registrant’s product is narrowly marketed to a particular type of customer and it is not reasonable to expect that the Registrant will expand its business to selling snowboards, etc., in the future and the Applicant has amended its description of goods and services to avoid any likelihood of confusion and goods and services are not comparable and REDEMPTION creates a different impression to REDEMPTION SPORTS, the Parties marks and consumer bases are and will be sufficiently different so that no confusion is likely.

For the foregoing reasons, the refusal to register on the basis of Trademark Act Section 2(d), 15 U.S.C. §1052(d) should be reversed and the application should be forwarded to publication.


Respectfully submitted,

Date: September 28, 2009


/Michael D. Volk Jr./
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Attorney for Applicant

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EXHIBIT A





Lucky Craft Weekly Journal




A New Lucky Craft Spinnerbait Seires

Produced by 2007 AOY Winner, Skeet Reese






Redemption
Type: Spinnerbait
Size: 1/4 oz
1/2 oz
3/8 oz
3/4 oz
1 oz




fishluckycraft




Skeet Reese -
Redemption Spinnerbait

04:08




Brent Ehreifer -
Lucky Craft Sammy 105

01:31



Bryan Watts -
Saltwater ISG Rods

02:17



Greg Watts -
Saltwater ISG Rods


02:14

**Team
Lucky Craft
Videos**

The Official You Tube
home of Lucky Craft Pro
Staff Videos
at YouTube.com

**ICAST Show
2008
New Products**

Playlist



Gary Lobbins - Phantom
Chinabait Series

01:25

Description: New products
from the 2008 ICAST
show in Las Vegas.
From: fishluckycraft
Videos: 6
More playlists by
fishluckycraft

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EXHIBIT A



Contact ASA | Join ASA | Home Search

American Sportfishing Association

Leading the Way for Fishing's Future

75 YEARS
1933 - 2008

- Member Services
- Government Affairs
- Shows & Events
 - ICAST
 - Sportfishing Summit
 - National Fishing & Boating Week
 - Consumer Shows
- Data & Statistics
- Support Fishing
- Newsroom

Learn more about our foundations:



225 Reinekers Lane
Suite 420
Alexandria, VA 22314

phone: 703.519.9691
fax: 703.519.1872
info@asafishing.org



Make plans now to attend ICAST 2009

The International Convention of Allied Sportfishing Trades, better known as ICAST, is the world's largest sportfishing trade show. The show, being held at the Orange County Convention Center, July 15-17, is the cornerstone of the sportfishing industry, helping to drive sportfishing companies' product sales year round. From buyers to media to exhibitors, ICAST annually attracts 7,000 members of the international sportfishing community to the Convention Center.

Why exhibit at ICAST?

ICAST is the largest showcase of innovation in sportfishing gear and accessories under one roof.

ICAST is the world's largest sportfishing trade event hosting more than 800 international attendees representing 55 countries.

More than 2,000 buyers and 450 media representatives attended ICAST in 2008.

Contact Information

For more information about ICAST 2009, please contact ICAST Associate [Kenneth Andres](#) at 703-519-9691, x231, or ICAST Director [Maria del Valle](#), x240, or email icast@asafishing.org.

Exhibiting at ICAST 2009

ICAST 2009 is on track to be a sold-out show for the eighth consecutive year, so reserve your exhibit space today. More than 70 percent of the show floor is already sold out; so act now! Download an [Exhibit Space Contract](#) and [Floor Plan](#). You must be a member of the American Sportfishing Association (ASA) to exhibit at ICAST. For more detailed information about exhibiting at ICAST 2009, please visit our [exhibitor info](#) section. For more information on becoming an ASA member, please visit the [Membership section](#).

Attending ICAST

The [ICAST Web site](#) is your one-stop shop for all things ICAST 2009. This site will be updated frequently in the months leading up to the show, so check back often. Online registration for ICAST 2009 will open in early 2009.

New Product Showcase – ICAST's Flagship Feature

There is no doubt that the single most important feature for exhibitors and attendees alike, is the [New Product Showcase](#), ICAST's flagship feature. The Showcase offers exhibitors and buyers and members of the media a special opportunity to debut and preview hundreds of the next season's innovations in fishing gear and accessories. This is where the fishing industry debuts the latest innovations and recognizes the "best of the best."

ICAST and MAATS Together Again

In 2009, ICAST will once again co-locate with the [Marine Aftermarket Accessories Trade Show \(MAATS\)](#), produced by the [National Marine Manufacturers Association \(NMMA\)](#). The combination of these two shows will provide access to more of the industry's hottest products and companies. In 2008, ICAST and MAATS combined to attract nearly 10,000 attendees.

The Total Aftermarket Experience.



ICAST 2008 Highlights

In 2008, 7,000 representatives of the sportfishing industry came together for the industry's largest tradeshow in the world at the Las Vegas Convention Center for ICAST 2008. The show boasted nearly 2,000 buyers and 455 registered members of the media. ICAST 2008 featured a sold-out floor for the seventh consecutive year with 433 exhibitors filling 1,350 booths on a 350,000-square-foot show floor. ICAST 2008 welcomed 800 international attendees from 55 countries, continuing the tradition of being the world's largest show in the industry. Please visit the [ICAST 2008 Highlights](#) page to experience last year's show.

ICAST 2009

- Exhibitor Info
- Exhibitor List
- Floor Plan
- Exhibitor FAQs
- 2008 Highlights



... It's Free!



EXHIBIT B

American Sportfishing Association

Leading the Way for Fishing's Future

Membership Application Form

SECTION 1: COMPANY AND PRIMARY CONTACT INFORMATION

Company Name

Address

Suite

City

State

Zip Code

Country (if outside U.S.)

Phone

Toll free

Fax

Contact (Mr./Ms./Mrs.)

Contact Title

Contact Email Address

Website URL

SECTION II: MEMBERSHIP CATEGORY *(Check one--see reverse for category descriptions)*

- | | | |
|---|---|---|
| <input type="checkbox"/> Sportfishing Manufacturer* | <input type="checkbox"/> Allied Manufacturer* | <input type="checkbox"/> Marine Manufacturer* |
| <input type="checkbox"/> Manufacturer's Rep | <input type="checkbox"/> Allied Organization | <input type="checkbox"/> Wholesaler* |
| <input type="checkbox"/> Retailer* | <input type="checkbox"/> Advocacy Group | <input type="checkbox"/> Media |
| <input type="checkbox"/> Representative Agency | <input type="checkbox"/> Resource Agency | |

***In order to help estimate your dues which will be kept strictly confidential, please include the following information.**

Annual Sales Related to Fishing \$ _____ *(estimate)*

Percentage of Sales Related to Fishing _____ %

From what types of products do the above sales figures derive? _____

Brand Names: _____

Brief Company Description: _____

***Please return form by fax to (703) 519-1872 or by mail to:
American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314***

EXHIBIT B

Advocacy Group: A non-profit organization whose primary objective is the promotion of fishing or natural resource conservation.

Allied Manufacturer: A company that does not produce fishing tackle but whose primary source of income comes from the production or private labeling of merchandise that may be used by anglers.

Allied Organization: A for-profit or non-profit organization with a mission or purpose related to the sportfishing industry.

Marine Manufacturer: A company whose primary source of income comes from the manufacture of marine engines and/or boats.

Media: A company or individual whose primary source of income comes from print publishing, television, video or radio production. Also included are marketing, advertising and public relations firms.

Representative Agency: A company whose primary source of income comes from sales on behalf of a manufacturer through a contractual agreement. Companies in this category may not be associated in any way with the production or private labeling of merchandise.

Resource Agency: Any state or federal fish and wildlife or natural resource agency.

Retailer: A company whose primary source of income comes from the operation of a retail outlet including catalog, mail order or Internet transactions.

Sportfishing Manufacturer: A company whose primary source of income comes from the production, private labeling, importing or exporting of products that are directly related to the act of fishing with production facilities in the United States and other countries. Also included are subsidiary companies and divisions that share common ownership with a parent manufacturing or private labeling company.

Wholesaler: A company whose primary source of income comes from the resale of merchandise to retail merchants. Wholesalers purchase and maintain inventory of fishing tackle and related products, other than their own private label; maintain a listing of products carried, either in print or electronically; and resell to stocking retailers not connected with the wholesale company.

Non-Voting Associate Member: Any individual, partnership or corporation that has a special interest in sportfishing and is not eligible for, or does not desire, regular membership including manufacturer representatives, charter boat companies or captains, consultants and benefit providers.

EXHIBIT C

LUCKY CRAFT U.S.A.

日本語

Product BASS Tour NRG EPG Salt Water TV Show

- Home
- History
- National Pro Staff
- National Pro Staff ~SW~
- Regional Pro Staff
- International Pro Staff
- Media
- Catalog
- Item List
- For Dealer

The Sammy 105 & Kelly J

COSTA MESA, Calif. (April 17, 2009) – At ICAST 2008, Lucky Craft released the Sammy 105, a new design of one of the most popular Lucky Craft topwater lures. The new bait doesn't replace any of the existing baits in the Sammy series, but with its new features, it will add another element to fishing a topwater plug.
Read entire story>>>

>Product Redemption
Kelly J & Sammy 105
Gunfish
G-Splash

The Official Lucky Craft Blog
THE DAILY CRANK
FISH, CATCH, BLOG ... REPEAT

ON YouTube
REEL IN THE OUTDOORS STIHL

REDEMPTION
FREE Monthly E-Magazine
Sign up Today!

Bass Tour		Product News	
NRG ~Native River Fishing~	Perch COLLECTION	Trout MASTER	Salmon COLLECTION
EPG ~Exotic Predator Game~	Walleye HUNTER	Northern Pike	Musky HUNTER
ISC ~Inshore Game~	BITE ~Brazilian Inshore Fishing~	FLK ~Australian Inshore Fishing~	WES ~Western Inshore Fishing~
ESG ~Enjoy Seaboard Game~	CR ~California Inshore Fishing~	OSC ~Off Shore Game~	OSF ~Off Shore Fishing~

EXHIBIT C



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Contact Information

Telephone
> Toll Free: (800) 270-3117
> Catalog Request: (714) 241-8484 x1
> Sales: (714) 241-8484 x1
> Accounting: (714) 241-8484 x2
> Warehouse: (714) 241-8484 x3

Facsimile
> (714) 241-8480

Address
> 380 Clinton Street
> Costa Mesa, CA 92626

E-mail
> Catalog Request: info@luckycraft.com
> Sales: sales@luckycraft.com
> Customer Support: support@luckycraft.com

Complete Dedication to Ultimate Performance...that's Lucky Craft

Lucky Craft Inc., craftsmen of the Pointer, Sammy and other high performance lures, is quickly becoming recognized as the leader among American anglers.

In a whirlwind of tournament victories across the country, Lucky Craft has become the Pros' #1 choice in bait. And now the secret is out as anglers of all levels are developing a special attraction for these lures for one simple reason... they catch more fish.

Our lures, a result of many years of research and development coupled with the finest materials, patented manufacturing process and quality control, are a testament to our complete dedication for the ultimate fishing experience. This excellence in craftsmanship goes into every Lucky Craft bait.

As soon as you pick up our lure, you immediately see the quality that's apparent in our product. And we're proud to say, that's just the beginning... wait until you feel the irresistible action on the water!

So get your Lucky Craft lure today and experience the ultimate rewards of fishing.

Modern Technology & Traditional Craftsmanship

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